

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 14972US02)RECEIVED
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In the Matter of:

Marcus Kellerman, *et al.*

Serial No. 10/675,110

Filed: September 30, 2003

For: MEDIA PROCESSING SYSTEM
SUPPORTING DIFFERENT MEDIA
FORMATS VIA SERVER-BASED
TRANSCODING


Examiner: Christopher A. Revak

Group Art Unit: 2131

Confirmation No. 4986

CERTIFICATE OF FACSIMILEI hereby certify that this
correspondence is being sent via
facsimile to the United States Patent
and Trademark Office on April 24,
2006.

By


Ognyan I. Beremski, Esq.
Registration No. 51,458**PRE-APPEAL BRIEF REQUEST FOR REVIEW**Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicants request review of the final rejection in the above-identified application, stated in the final Office Action mailed on February 9, 2006 (hereinafter, the Final Office Action). The Examiner has also mailed an Advisory Office Action on April 4, 2006 (hereinafter, the Advisory Office Action). No amendments are being filed with the present request.

This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

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REMARKS

The present application includes pending claims 1-28. Claims 13-15 and 21-28 are allowed and claims 1-12 and 16-20 stand rejected. The Applicants respectfully submit that the claims define patentable subject matter.

Claims 1-5, 7-12, 16 and 17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Suzuki, et al., U.S. Patent 6,463,445 (hereinafter, Suzuki). Claims 6 and 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki. The Applicants respectfully traverse these rejections at least for the following reasons:

I. Claim Rejections under 35 U.S.C. § 102(e)

The Applicants first turn to the rejection of claims 1-5, 7-12, 16 and 17 under 35 U.S.C. § 102(e) as being anticipated by Suzuki.

With regard to the anticipation rejection under Suzuki, MPEP 2131 states that "[a] claim is anticipated only if *each and every element* as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). MPEP 2131 also states that "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

With regard to the rejection of independent claim 1 under Suzuki, Applicants submit that Suzuki clearly does not disclose or suggest at least the limitation of "a second communications device operatively coupled to the network, the second communications device receiving, from the first communications device, a device profile relating to the first communications device, and the second communications device sending the device profile and media content to the server, the server reformatting the media content based on the device profile," as claimed by the Applicants in independent claim 1 (emphasis added). In response to the Applicants' arguments filed on 13-OCT-05, the Final Office Action and the Advisory Office Action states:

"The multimedia content server, interpreted as the second communication device, receives client information, interpreted as the device profile, related to the client, interpreted as the first communication device, from the client, interpreted as the first communication device, and the content server, interpreted as the second communication device, sends the client information, interpreted as the device profile, and media content to the data access server." See the Final Office Action, page 2, and the Advisory Office Action, page 2. (Emphasis added).

The Applicants respectfully disagree with the above assertion. The Applicants submit that the multimedia content server 210 of Suzuki, interpreted by the Examiner as

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the second communication device, receives only content information request 248 from the server 220, and **not a device profile** as claimed by the Applicants in claim 1. See Suzuki, Figure 2, and column 6, lines 21-62. Furthermore, the Applicants submit that the multimedia content server 210 of Suzuki, interpreted by the Examiner as the second communication device, **sends only multimedia information 246 to the server 220, and not a device profile**, as claimed by the Applicants in claim 1. See *id.*

As shown in Figure 1 of Suzuki, Suzuki teaches that the data access server 220, and not the second communication device (multimedia contents server 210), receives the client information signal 242 (See Suzuki, col. 6, lines 21-22), in contrast to what is recited by the Applicants in claim 1. Furthermore, Suzuki teaches that only multimedia content 246, and not device profile information, is communicated from the second communication device (multimedia contents server 210) to the data access server 220 (See Suzuki, col. 6, lines 22-34), which is also in contrast to what is recited by the Applicants in claim 1.

Furthermore, the Advisory Office Action is attempting to broadly interpret "device profile" to cover "information supplied by the client that dictates what format the media is to be altered into." See the Advisory Office Action, page 2. The Applicants respectfully disagree with such interpretation as it is overly broad and not supported by Suzuki. In addition, referring to Figure 1 of Suzuki, the data access server 220 communicates a **content information request 248**, which, the Applicants submit, is not related to any device profile, including information related to media format conversion.

With regard to the rejection of independent claim 16 under Suzuki, the Applicants submit that Suzuki clearly does not disclose or suggest at least the limitation of "a communications device operatively coupled to the network, the communications device receiving media content of a format that is not supported by the communications device and sending a device profile of the communications device and the received media content to the server," as claimed by the Applicants in independent claim 16. As shown in Figure 1 of Suzuki, Suzuki does not teach that the communications device (client 230) receives "media content of a format that is not supported by the communications device," as recited by Applicants in claim 16. Instead, Suzuki teaches that the original (non-transcoded content 246) is communicated from the second communication device (per the Examiner, multimedia contents server 210) to the data access server 220, and not to the client 230. See Suzuki, column 7, lines 23-24. In this regard, Suzuki only discloses that the client 230 communicates client information signal 242 (See Suzuki, column 6, lines 55-57) and that the client 230 receives transcoded multimedia content 244 (See Suzuki, column 7, lines 29-30).

Based on at least the foregoing, the Applicants believe the rejection of independent claims 1 and 16 under 35 U.S.C. § 102(e) as being anticipated by Suzuki has been overcome and request that the rejection be withdrawn. Additionally, claims 2-

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5, 7-12, and 17 depend from these independent claims and are consequently also respectfully submitted to be allowable.

II. Claim Rejections under 35 U.S.C. § 103

Claims 6 and 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki.

With regard to an obviousness rejection, MPEP 2142 states that in order for a *prima facie* case of obviousness to be established, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. *Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.* Further, MPEP 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination," and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a *suggestion or motivation in the reference to do so*'" (citing *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990)). Moreover, MPEP 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion..., citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ 2d 1161 (Fed. Cir. 1999).

With respect to the rejection of claim 6 which depends from independent claim 1, Applicants respectfully submit that Suzuki does not render claim 6 unpatentable at least for the reasons discussed above with respect to independent claim 1.

With regard to the third criterion stated above and in reference to independent claim 18, Applicants submit that Suzuki does not disclose or suggest at least the limitation of "sending the revisable device profile to a first communications device operatively coupled to the network, and receiving media content, from a second communications device operatively coupled to the network, wherein the multimedia content has been reformatted based on the device profile," as claimed by the Applicants in independent claim 18. As shown in Figure 1 of Suzuki, Suzuki teaches that the first communication device (client 230) sends client information signal 242 *only to the data access server 220*, which performs the transcoding and not to another communication device (See Suzuki, column 6, lines 21-22). In contrast to what is claimed by the Applicants in claim 18.

Based on at least the foregoing, the Applicants believe the rejection of independent claim 18 under 35 U.S.C. § 103(a) as being unpatentable over Suzuki has been overcome and request that the rejection be withdrawn. Additionally, the

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Applicants believe the rejection of dependent claims 6 and 19-20 under 35 U.S.C. § 103(a) as being unpatentable over Suzuki has also been overcome at least for the reasons stated above and request that the rejection be withdrawn.

III. Conclusion

The Applicants respectfully submit that claims 1-12 and 16-20 of the present application should be in condition for allowance at least for the reasons discussed above and request that the outstanding rejections be reconsidered and withdrawn. The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,



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